

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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BAKERY AND CONFECTIONARY UNION AND  
INDUSTRY INTERNATIONAL PENSION FUND  
and BOARD OF TRUSTEES OF THE BAKERY  
AND CONFECTIONARY UNION AND  
INDUSTRY INTERNATIONAL PENSION FUND,

**ORDER**

21-CV-294 (MKB) (AYS)

Plaintiffs,

v.

M & A BAKING CORP.,

Defendant.

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MARGO K. BRODIE, United States District Judge:

Plaintiffs Bakery and Confectionary Union and Industry International Pension Fund (the “Pension Fund”) and the Board of Trustees of the Bakery and Confectionary Union and Industry International Pension Fund (the “Board”) commenced this action on January 19, 2021, to collect “delinquent contributions and withdrawal liability” from Defendant M&A Baking Corp. pursuant to the Employee Retirement Income Security Act, 29 U.S.C. § 1001 *et seq.*, as amended by the Multiemployer Pension Plan Amendments Act of 1980 (“ERISA”). (Compl. ¶ 1, Docket Entry No. 1.) Defendant failed to answer the Complaint or otherwise appear in this action. Plaintiffs moved for a default judgment on June 15, 2021, (Pls.’ Mot. for Default J., Docket Entry No. 8), and on June 16, 2021, the Court referred the motion to Magistrate Judge Anne Y. Shields for report and recommendation, (Order dated June 16, 2021).

By report and recommendation dated November 10, 2021, Judge Shields recommended that the Court grant Plaintiffs’ motion for a default judgment against Defendant, and award Plaintiffs (1) \$12,408.14 in delinquent contributions; (2) \$35,952.00 in unpaid withdrawal

liability; (3) \$2,752.64 in interest on the delinquent contributions through the date of entry of judgment, with additional interest to be calculated at a rate of \$1.87 per day; (4) \$3,496.51 in interest on the unpaid withdrawal liability through the date of entry of judgment, with additional interest to be calculated at a rate of \$3.20 per day; (5) \$7,190.40 in liquidated damages; (6) \$8,177.50 in attorneys' fees; and (7) \$504.50 in costs (the "R&R"). (R&R at 14, Docket Entry No. 10.)

No objections to the R&R have been filed and the time for doing so has passed.

## **I. Discussion**

A district court reviewing a magistrate judge's recommended ruling "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). "Where parties receive clear notice of the consequences, failure to timely object to a magistrate's report and recommendation operates as a waiver of further judicial review of the magistrate's decision." *Smith v. Campbell*, 782 F.3d 93, 102 (2d Cir. 2015) (quoting *Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002)); *see also Phillips v. Long Island R.R. Co.*, 832 F. App'x 99, 100 (2d Cir. 2021) (same); *Almonte v. Suffolk County*, 531 F. App'x 107, 109 (2d Cir. 2013) ("As a rule, a party's failure to object to any purported error or omission in a magistrate judge's report waives further judicial review of the point." (quoting *Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003))); *Sepe v. N.Y. State Ins. Fund*, 466 F. App'x 49, 50 (2d Cir. 2012) ("Failure to object to a magistrate judge's report and recommendation within the prescribed time limit 'may operate as a waiver of any further judicial review of the decision, as long as the parties receive clear notice of the consequences of their failure to object.'" (first quoting *United States v. Male Juv.*, 121 F.3d 34, 38 (2d Cir. 1997); and then citing *Thomas v. Arn*, 474 U.S. 140, 155 (1985))); *Wagner & Wagner, LLP v. Atkinson*,

*Haskins, Nellis, Brittingham, Gladd & Carwile, P.C.*, 596 F.3d 84, 92 (2d Cir. 2010) (“[A] party waives appellate review of a decision in a magistrate judge’s [r]eport and [r]ecommendation if the party fails to file timely objections designating the particular issue.” (first citing *Cephas*, 328 F.3d at 107; and then citing *Mario*, 313 F.3d at 766)).

The Court has reviewed the unopposed R&R and, finding no clear error, adopts the R&R pursuant to 28 U.S.C. § 636(b)(1).

## II. Conclusion

Accordingly, the Court adopts the R&R and grants Plaintiffs' motion for a default judgment against Defendant. The Court awards Plaintiffs (1) \$12,408.14 in delinquent contributions; (2) \$35,952.00 in unpaid withdrawal liability; (3) \$2,752.64 in interest on the delinquent contributions through the date of entry of judgment, with additional interest to be calculated at a rate of \$1.87 per day; (4) \$3,496.51 in interest on the unpaid withdrawal liability through the date of entry of judgment, with additional interest to be calculated at a rate of \$3.20 per day; (5) \$7,190.40 in liquidated damages; (6) \$8,177.50 in attorneys' fees; and (7) \$504.50 in costs.

Plaintiffs are directed to serve copies of this Order upon Defendant at its last known address and to file proof of service with the Court. The Clerk of Court is respectfully directed to close this case.

Dated: December 29, 2021  
Brooklyn, New York

SO ORDERED:

s/ MKB  
MARGO K. BRODIE  
United States District Judge